



THE COMMONWEALTH OF MASSACHUSETTS
WATER RESOURCES COMMISSION

Meeting Minutes for November 14, 2002

Members in Attendance:

Peter C. Webber	Commissioner, DEM
Mark P. Smith	Designee, EOEA
Mark Siegenthaler	Designee, DHCD
Glenn Haas	Designee, DEP
Gerard Kennedy	Designee, DFA
Mark Tisa	Designee, DFWELE
Joe McGinn	Designee, MDC
Joe Pelczarski	Designee, CZM
Richard Butler	Public Member
Gary Clayton	Public Member
David Rich	Public Member
Matthew Rhodes	Public Member
Bob Zimmerman	Public Member

Others in Attendance:

Michele Drury	DEM
Linda Marler	DEM
Mike Gildesgame	DEM
Bob Chapell	Woodard & Curran
Dan Garson	Woodard & Curran
Kurt Gaffney	Town of Mansfield
Lee Azinheira	Town of Mansfield
Steve Garabedian	USGS
Margaret Kearns	Riverways Program
Lise Marx	MWRA
Marilyn Newman	Mintz, Levin
Ralph Child	Mintz, Levin
Sharon Pelosi	DEP
Jessica Stephens	Neponset River Watershed Association

Agenda Item #1: Executive Director's Report

- The Drought Management Task Force met on October 31st. The state remains under a drought advisory. The recent rain has been helpful. Meteorologically, this is no longer a drought. Precipitation conditions are close to normal for the last three and six months,

but hydrologically, the ground water hasn't started to recover. For that reason the Task Force recommended that the state remain at the drought advisory level.

- EPA is running a national watersheds program. They hope to pick 20 watersheds from around the country for a set of pilot programs. Massachusetts will be endorsing six proposals, overall, two intrastate projects in the Charles and SuAsCo basins, and four interstate proposals in the Merrimack River basin, Connecticut River basin, Nashua River basin and Narragansett Bay watershed. The proposals are due next week.
- Smith and Gartland have been working with Seachange on groundwater recharge issues. This organization will be putting on a conference next spring.
- Secretary Durand's speech, "Securing our Water Assets" is now on the web and it is generating a lot of interest.
- Charlton has asked for an indefinite postponement on the decision for their request for a determination of insignificance. Smith asked WRC for their opinion on sending a letter to the Town saying that they should either withdraw the application or the WRC will make a decision in December. This has been hanging for six months. It doesn't serve the town or the WRC well to leave the issue open indefinitely. Butler asked if there had been any conversations with the town's consultants on this. Drury responded that they've talked every month. Staff has been working with the Town and DEP on the ACO, as well.
- The certificate on the Reading DEIR has been issued. The certificate acknowledged that the problems of the Ipswich are watershed-wide. WSCAC has raised policy issues concerning review of this project under the Interbasin Transfer Act. WRC staff commented on the DEIR, outlining the information still required for ITA review. The letter is in the package. Staff will be making a presentation to the WRC on the additional information required next month.
- The solicitation for the ACOE projects has gone out. We are hoping for some interesting projects this year.

Marler provided an update on the hydrologic conditions:

- There was a good deal of rainfall in the last two months. In October, precipitation was 115% of normal, statewide. A little less was received on Cape Cod and the Islands, 78%. The two month figures for all regions are good. The Precipitation Index of the state drought plan is at normal.
- Ground water and reservoir levels have not fully recovered.
- There is a drought advisory, statewide.
- Ground water levels are still quite a bit of below normal in areas of the state, however this is a great improvement since even September. Ground water levels are coming back up now, but there are still some areas that are not improving. These areas are being watched and the Task Force will be meeting again in mid-December.
- Streamflow in October improved over that recorded in September, although there are still quite a few areas that are below normal. So far, November's streamflow is in the normal range. If the weather continues as expected, the streamflow numbers for next month could be much improved.
- Reservoir levels have not recovered yet. Worcester's reservoirs, Springfield's Cobble Mountain and the Quabbin are still below the normal range for this time of year. We

hope that the fall and winter rains will restore these levels, so that when spring comes they will be at normal levels.

- Fire danger levels in October were moderate. The fire season is officially over, so daily fire danger values will no longer be provided.
- The Drought Mitigation Center shows Massachusetts not to be in drought; the Weather Service is forecasting normal to above normal precipitation for November. The Seasonal Forecast Map shows above normal temperatures and equal chances for precipitation being above normal, normal, or below normal through January. El Niño conditions are expected to be in effect this winter. This would result in warmer than normal conditions with a normal amount of rain, however, snowpack, which is important for ground water recharge in spring, will not be a factor if these conditions prevail. A normal amount of rainfall, though, would be a great improvement over what was received last year.
- The Madden-Julian oscillation is predicted to give us cold and stormier situations beyond November.
- Marler and Gartland gave a presentation at the Southern New England Weather Conference on November 2nd regarding the drought.
- The weekend forecast includes the potential for a nor'easter. It is expected to give significant precipitation, 1-3 inches, between Saturday and Sunday.

Agenda Item #2: Vote – Meeting Minutes for December 14, 2000 and January 11, 2001

A motion was made by Webber and seconded by Haas, to approve the minutes for December 14, 2000. The motion passed with one abstention.

A motion was made by Clayton and seconded by Zimmerman, to approve the minutes for January 11, 2001. The motion passed with one abstention.

Agenda Item #3: Discussion – WRC's 1995 Framingham Extension Relief Sewer IBT Decision with respect to the JPI development and Ashland Rail Transit District

Smith said this project needed discussion because it impacts a previous Commission decision. Drury stated that in 1995 the MWRA requested a Determination of Applicability for the Framingham Extension Relief Sewer. This sewer was tributary to the Wellesley Extension Relief Sewer that had been approved by the WRC in 1988. At that time, it assumed an amount of flow from the Framingham Sewer. By the time the Framingham Extension Relief Sewer had gone through the facilities planning process in 1995, the MWRA realized that the sewer was in such poor condition that the amount of flow originally planned for was excessive. A smaller capacity could be used for a rehabbed Framingham sewer. Therefore, the Framingham Extension Relief sewer came before the WRC for a lesser amount than had been analyzed under the review for the Wellesley Extension Relief Sewer.

Under these conditions, the WRC determined that Interbasin Transfer Act did not apply. As part of the application for the Request for a Determination of Applicability, the MWRA had given some flow numbers for each community that would use the sewer facilities. These numbers were broken down into sanitary, infiltration, inflow, and peak flows. The review for the Request

for Determination of Applicability was based on these numbers, and the Staff Recommendation for this decision had a table which allotted these flows to the communities.

In 2000, Staff was contacted by a developer from Ashland, a Framingham Extension Relief sewer community. Ashland's flows are limited to 1.24 mgd under the numbers given by the MWRA in their 1995 request. Ashland is expanding its sewered area and has already allocated this amount. Ashland has the capacity, but it does not have the flow allocation from the MWRA to take flow from this development, the JPI Ashland Rail Transit District. This is a multifamily development adjacent to the MBTA commuter rail. It is a "smart growth development". It is also a redevelopment of the Nyanza superfund site.

As stated, the capacity is not the issue, the allocation by the MWRA is. Any change in Ashland's contract with the MWRA would trigger the Interbasin Transfer Act. The neighboring town of Framingham, also served by the Framingham Extension Relief sewer, has allocation that is not being utilized. The town also needs to do some I/I removal work. JPI entered into an agreement with Framingham to remove the I/I. There will be no increase in the capacity or in the overall flows that were analyzed under the 1995 request, so there is no increase in the present rate of interbasin transfer, therefore the Act does not apply.

The Framingham Extension Relief Sewer serves two basins: the Charles River and the Concord River basins. Staff concern was that any flow that was traded off had to be within the Concord River basin, because that is where the flows originated. JPI provided documentation showing where the I/I projects would be located. The flows from the basins are not increased.

Smith stated that we needed to be on the record as modifying information that had been provided to us by the MRWA and that we wanted MWRA to acknowledge this. MWRA has sent a letter stating that this project is within the capacity of its system and these re-allocated numbers are an accurate reflection of the capacity allocation. If this is accepted by the WRC, the revised table, reflecting the agreement between JPI and Framingham, will be placed in the files for future reference. The revised table shows part of the original Framingham flow allocation now reallocated specifically to the Ashland Rail Transit District. This amount will be 130,000 gallons per day (gpd), with an additional 4,000 to be negotiated as other development takes place within the district.

Smith said that the proponent had looked for on-site wastewater disposal sites and was unsuccessful. Staff discussed the possibility of avoiding the interbasin transfer act with them by doing flow offsets via I/I removal. This is the approach they were able to take, and Staff is comfortable sending a letter saying this proposed development is not applicable, if the WRC agrees.

Zimmerman asked how we are able to guarantee that this I/I is actually removed. Drury replied that DEP had a formula that considers certain actions to be the equivalent of an amount of flow removal. He then asked if monitoring would occur. Not specifically, but MWRA will be monitoring overall flows and, as stated, if there is no increase in the overall flows (requiring an increase in capacity or renegotiation of the contract), there is no Interbasin Transfer. This is purely a question of whether or not the Act applies.

Clayton said there were a number of small transfers that don't trigger the Act. He is concerned about potential cumulative impacts. Smith stated that MWRA approved its expansion plan, requiring master planning by communities, so that these small developments do not have to come to the state on their own for permits. Webber asked if there was a data base that tracks these smaller projects. If they come through MEPA, Staff catch them. Also, DEP closely consults with us on projects that could have potential IBT issues.

Smith said that we will send letter stating that this is within the previous decision. Haas asked if we would be requiring monitoring. If the Commission doesn't take jurisdiction, we can't require monitoring. The Commission can state that if flows increase beyond what is stated here, we will require further review.

Agenda Item #4: Presentation – Mansfield's Local Water Resources Management Plan

In 2000, the WRC approved Mansfield's request for approval, under the Interbasin Transfer Act, of the Morrison Well, near the Witch Pond swamp. One of the requirements was that Mansfield complete a Local Water Resources Management Plan as required by the regulations. Staff has worked closely with Mansfield's consultants, and a copy of the plan (minus most of the appendices) was sent to the WRC in this month's mailing. This is their final draft Local Water Resources Management Plan. The plan follows the 1999 outline from Appendix B of the IBT Performance Standards. Staff finds that it fulfills the requirements of the regulation. The Town also is developing a water system management action plan. In that plan, the town used a residential gpcd of 72. We reminded them that they are required to aim for 65, and staff suggested that they show a range of demands which they did. For maximum day demands they used a peaking factor based on past water use. The town is implementing a toilet rebate plan which is described in Appendix E of the plan. Staff is recommending that the plan be approved as it meets the requirements of the Interbasin Transfer Act regulations. A vote will be requested at the next meeting.

Clayton asked about the nature and extent of the public process used in the development of this plan. Drury replied that the intent of the plan is to be a compilation of all the other plans that the town has developed over the years. These plans do not go out to public hearing. The other plans referred to within the Local Water Resources Management Plan have had a public process.

When the well was approved, the town was required to conduct a year of baseline monitoring. This was completed in August and the town was given permission to turn the well on, but water levels were at the thresholds. This was due to the drought.

Agenda Item #5: Presentation – Revised application forms for requests for determination of applicability and for requests for determination of insignificance under the Interbasin Transfer Act

Drury stated there is a formal process for determinations of applicability. The Commission has had enough experience with the Act to know if something clearly is applicable or not, but there are always complicated and/or precedent setting cases or ones that are not quite so clear under the Act. These require the formal process. The revised request for determination of applicability

is not that much different from the older form. Under Section C, a few more questions that are more specific to the exemptions under the Act have been added, and the newer version reflects our experience with implementing the Act. The order of the questions has been rearranged to make them flow a bit better. If the answers to the questions under Section C are inconclusive, these other questions help Staff assess the project and the applicability of the Act.

Clayton asked if any of these questions are the same as questions that might be asked in other state environmental permits. Drury replied that all permit application forms, including this one, ask about the other permits being applied for. The other questions in this form are very specific to the Interbasin Transfer Act. The revised application form will be available electronically, so a proponent could cut and paste from other applications, where needed.

Drury then discussed the revised request for determination of insignificance application forms. This is a very important piece for smaller projects which need IBT review. WRC experience has shown that sometimes a small transfer can have significant impacts. This form has been totally rearranged, but most of the questions from the old form are still here in a different format. Under Section 3, the criteria for insignificance have been added. This section also requests information that must be provided to assess the impacts of the project against these criteria. Speaking for herself, Drury stated that it seems that some proponents are very much surprised when they find out that having a transfer of less than 1 mgd is not the only criterion for insignificance. By listing the environmental criteria for insignificance in the application form, proponents will know what they will be evaluated against. The information requested in the new form is information that has been requested anyway, whenever a request for determination of insignificance is received. It is helpful to ask for the information specifically in the application form. There is also a question about stressed basins, because being in a stressed basin could make a difference as to the level of review a project will need.

Clayton made some suggestions as to language that will clarify some of the questions in the application form. Gildesgame suggested that other Commissioners should provide comments on the applications before next month's meeting at which time the WRC will be asked for a vote..

Agenda Item #6: Discussion – Proposed Changes to Title 5 Regulations

Gildesgame stated that in 1995, the WRC voted on the then-proposed Title 5 regulations. Pelosi said the new proposed revised regulations had been placed on the DEP website. These revisions were the result of the Governor's Special Commission on Reducing Barriers to Affordable Housing. One of the recommendations was that DEP increase the allowable percolation rate under Title 5. Right now it is 30 minutes per inch (mpi). The proposal is to increase it to 60 mpi. The commission looked at other recommendations, as well. One was to look at pilot program which was rejected. When Title 5 was changed in 1995, DEP had a 3 year period to evaluate the 60 mpi percolation rate. The regulations allowed for a smaller pilot program (20 systems per year) to test this rate. It was not well used. The change to 60 mpi has always been contemplated, and DEP is comfortable with science behind 60 mpi. There are 21 states that use the percolation rate to regulate Title 5-type systems. Of these, only three states, including Massachusetts, have a rate lower than 60 mpi. There is a large body of evidence that shows that 60 mpi is effective. DEP met with the Title 5 round table, which was in favor of the change. The public comment period opened on October 29th and will run through December 6th. There

are two public meetings: November 20th, in Boston and November 21st, in Northampton, at the Department of Public Health.

Smith asked what it means to go from 30 mpi to 60 mpi. Haas replied that the percolation rate is the amount of time it takes for water to go through the soil. It has to do with the thickness of the soils and how receptive they are to receiving the flow. It will change loading rates. It will open up areas in the Commonwealth that are not suitable for Title 5 systems under the current regulations.

Zimmerman is against the regulatory change since he feels it will encourage urban sprawl, based on his experience as a member of the Littleton Board of Health. Rich asked about the leaching fields for these systems. Haas replied that they would need to be larger. Pelosi said that an option open under these revised regulations was to use pressure distribution in order to avoid larger systems. Zimmerman said that these regulations would lead to clear-cutting eastern Massachusetts. Haas said that DEP was asking for comments on the effective dates for the revised regulations, in order to give local communities time to adjust their zoning regulations. Haas added that he would prefer this regulatory change to keep the water local, rather than extending sewers to facilitate development

Webber asked if the percolation rate varied by soil type. Pelosi said that this is dependant on the subsoils. There is a chart in the proposed regulations which explains loading rates for different types of soils. Webber then asked if Pelosi knew what the other recommendations of the Governor's Special Commission on Reducing Barriers to Affordable Housing were. Pelosi replied that many dealt with increasing the amount of technical assistance and training. Zimmerman added that there was a strong push to make sure that no environmental regulations that could not be scientifically supported could be enacted.

Clayton said that this has been a long-standing issue, since the regulations were first revised in 1995. At that time, there was a requirement for DEP to come back and review this issue. This did not just emerge from the Governor's Special Commission on Reducing Barriers to Affordable Housing. Haas said that scientifically, 60 mpi was supportable, but there was concern about doing this right away without letting communities and DEP prepare. Zimmerman said that these were sprawl enabling regulations.

Clayton asked if there was only one other state with a 30 mpi rule? Pelosi replied that Maryland is a bit more restrictive; it allows greater than 30 mpi for mounded systems. Louisiana requires 20 mpi and Rhode Island allows a maximum of 40 mpi.

Clayton asked for information on the pressure distribution system. Haas said that these are mechanical or gravity systems. Mechanical systems require maintenance and there was concern about who would maintain them. Pelosi said now a homeowner is required to have quarterly inspection conducted by an agent of the homeowner to be reported to the Board of Health. Clayton said he shared Zimmerman's concerns about the growth implications, so he supported not having these regulations going into effect immediately. At the municipal level, at least a year is needed to prepare for implementation; however, he does not think that Title 5 should be used as a land use control tool. The state should provide effective tools to municipalities to control growth. Smith said that the Community Preservation Initiative was a step in this direction.

Agenda Item #7: Update – 2002 WRC Work Plan

Smith said that there was a request for a discussion of state disincentives- what we won't be doing because of budget cuts. This will be discussed next month because Haas had to leave. He went over things that have been accomplished so far.

- Water assets: progress was slowed because of budget problems. However, the new environmental bond bill has become available and there is now an RFR advertised. This project will continue into next year.
- Outdoor water use: both the guide and policy were approved this year.
- IBT guidance and regulation revision: The guide will be brought to the WRC in December. Once that has been in place for awhile, the regulations will be revised.
- Stressed basins: Water quality data from the 303d list did not get added because unforeseen work items, such as the drought task force, took up too much time. The WRC had a presentation on target fish communities and how to relate fish populations to hydrologic stress. This will probably be continued on next years work plan.
- The drought management plan: State agencies still need to endorse the plan and then it will be incorporated into the state's emergency plan. A few letters of endorsement have been received so far. The plan was put into use this year. It was used successfully, but due to this year's experiences, some parts of the plan will be refined.
- The MWRA System Expansion policy: The WRC had a presentation in March, as proposed in the work plan. The MWRA Board approved the policy yesterday. MWRA will be asked to come and give a final presentation.
- Biological conservation: The WRC had a presentation on the biomap.
- Other actions:
 - The hydrologic conditions reports
 - Presentation on forestry and municipal watershed management
 - Prioritized ACOE projects
 - Approved EIR scopes to address IBT issues
 - Eco-restorations
 - Approved/reviewed holding tank and othe DEP regulations
 - Interbasin Transfer reviews: Stoughton's application to join the MWRA; Essex sewerage request for determination of insignificance; Sager-Perrone and Charlton.

Smith encouraged Commission members to let Staff know of other ideas for next years work plan. Webber stated that last night there was a meeting of Environmental Management Commission for the Mass Military Reservation. A lot of the discussion concerned water supply issues. He thought that the WRC might want to review the work of Upper Cape Water Supply cooperative.

Meeting adjourned

Minutes approved 9/9/04